
International Labor Standards and Trade: What Should Be Done?

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To date, the debate over trade and labor standards has been frustratingly sterile, with the key parties mostly talking past one another. Developing-country governments, employers' organizations, and many trade economists have rejected any discussion of possible linkages between trade and labor standards, arguing that demands for such linking are a cover for old-fashioned protectionism. Many proponents of stronger international labor standards unfortunately feed this suspicion by focusing too narrowly on the use of trade sanctions to enforce them.

Opponents of international labor standards argue that countries should be able to choose their own labor standards according to their level of development—what they can afford—and local preferences. Some accuse advocates of labor standards of wanting to undo the comparative advantage of poor countries by imposing a global minimum wage. In general, the opponents reject the need for international labor standards, arguing that diversity in standards is legitimate and that there is no international spillover from the differences in national labor standards that justifies harmonization. Thus, these opponents reject the use of trade measures—either as a “remedy” for alleged unfair trade practices or as a “sanction” to induce countries to improve labor standards. Typically, opponents, especially the governments of developing countries, argue that the push to identify and enforce international labor standards is at best a misguided effort to impose “Northern” values on the “South” or at worst protectionism in disguise.¹

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1. For examples of this line of thinking, see Bhagwati (1995), Srinivasan (1994), and Anderson (1995).

Proponents argue that there are humanitarian, economic, and political reasons to have internationally enforced labor standards, including a “social clause” in trade agreements. Most advocates argue that there are certain core standards constituting fundamental human rights that should be enforced, including through trade sanctions, regardless of a country’s level of development. Some also argue that firms and even countries that engage or acquiesce in exploitative labor practices create an unfair competitive advantage for themselves. This unfair competition in turn pressures other countries to weaken labor standards in order to compete with the unfair trader’s exports and thus justifies the use of trade remedies to prevent a race to the bottom. Finally, there are proponents of labor standards who are also concerned about the viability of the international trade system. They argue that both the factors mentioned above tend to undermine support for liberal trade policies in countries with higher standards and may result in increased protectionism.²

In this chapter I argue, first, that there is a set of core labor standards that should be universally applied regardless of a country’s level of development. Second, these core standards should be subject to international negotiation and monitoring, for reasons elucidated below. Third, the consensus on these issues is too shallow to make a social clause in the World Trade Organization (WTO) either feasible or desirable. To advance these core standards, proponents must promote positive as well as negative incentives and eschew the use of sanctions except in a few narrowly defined cases, as discussed below.

Are There Universal Labor Standards?

Let us start by throwing out the largest of the red herrings that plague this debate. It is true that trade union officials and other labor advocates frequently cite low wages and poor working conditions as evidence of lax labor standards. But references to “internationally recognized” core standards usually focus on what the International Confederation of Free Trade Unions (ICFTU) calls “enabling rights,” principally freedom from forced labor and the right to organize and to bargain collectively. While there have been proposals for a global minimum wage, none of the specific proposals I have seen for a social clause in the WTO call for action on wages or working conditions.³

Most proposals for an international enforcement mechanism for labor

2. For examples of arguments in favor of internationally enforced labor standards, see International Confederation of Free Trade Unions (1993), Gephardt (1998), and Leary (1996). See also Rodrik (1997).

3. During the debate over the North American Free Trade Agreement (NAFTA), labor advocates did call for commitments from Mexico that wages would increase with productivity. The Economic Policy Institute, for example, published a study recommending that

standards distinguish very clearly between core standards or fundamental worker rights and other types of standards, such as minimum wages or working conditions, which Freeman (1996) calls cash standards. The International Labor Organization (ILO) has long defined core standards in terms of seven conventions, which the ICFTU and the Organization for Economic Cooperation and Development's Trade Union Advisory Committee (OECD/TUAC) also endorse:

- Nos. 87 and 98 on freedom of association and collective bargaining, respectively;
- Nos. 29 and 109 on freedom from forced labor;
- Nos. 100 and 111 on equal remuneration and nondiscrimination in employment;
- No. 138 on a minimum age for work.

The ILO calls these “fundamental human rights of workers” (Hansenne 1997, 2). As noted, the ICFTU (1993) refers to them as “enabling rights,” and the OECD (1996), which has a similar list, calls them “framework conditions” that make other standards meaningful. Enabling rights are key to establishing a process through which other “outcome-based” or cash standards can be determined through bargaining.

Virtually every list of core standards I have seen includes freedom of association and the right to collective bargaining, freedom from coerced labor, and nondiscrimination. These are the standards I will also adopt as universal core standards. Eliminating the exploitative use of child labor is on many lists but is more controversial, because very poor children with few options could be made worse off if they are denied the opportunity to work, even at low wages in horrible conditions. ILO Convention 138, which sets a minimum age for labor, has been widely criticized as both inappropriate and inadequate for dealing with the exploitation of children and has not been widely ratified, even by developed-country members of the ILO. To address these complaints, the ILO has drafted a new convention focusing on dangerous and abusive child labor practices. The proposed convention would apply to children under 18 and would address

all forms of slavery or practices similar to slavery; the sale and trafficking of children; forced or compulsory labour including debt bondage and serfdom;

the labor side agreement require Mexico to bring its minimum wage and working-hour standards to US levels within 10 years (Rothstein 1993). That was in the context, however, of a regional agreement involving deeper integration than currently contemplated in the WTO. In a speech on globalization to the Council on Foreign Relations in April 1998, AFL-CIO President John Sweeney referred to the need for “internationally recognized core labor rights—the right to organize, to bargain collectively, to strike.” The speech is available on the Web at <http://www.aflcio.org/publ/speech98/sp0401.htm>.

the use of children for prostitution; the production of pornography or pornographic performances; the production of or trafficking in drugs or other illegal activities; and the engagement of children in any type of work, which by its nature or the circumstances in which it is carried out, is likely to jeopardize their health, safety or morals. (International Labor Office 1996, 114)

The proposed convention was discussed for the first time at the recent ILO conference, and it was agreed that the same issues would be discussed again at next year's conference "with the view to adoption" (ILO, Fundamental Rights Declaration Clears Final Hurdle; ILO Conference Seeks End to Child Labor Abuses, press release ILO/98/28, 18 June 1998, Geneva). In the meantime, the worst abuses of child labor are likely to occur when it is bonded or otherwise coerced. Since forced labor is already on the list, I will include it there and not treat the elimination of child labor separately as a core universal labor standard.

In addition to being *rights* to which every person should be entitled, the core standards identified here would in many cases have neutral to positive effects on economic efficiency and welfare (freedom from discrimination and forced labor). The effects of freedom of association and collective bargaining rights are indeterminate, depending on the situation (Swinnerton 1997; Maskus 1997). Thus, there is no reason to expect that improved enforcement of these standards would have large negative effects on the comparative advantage of developing countries and therefore no reason that they cannot be universally applied (Freeman 1993, 1996). In resource-constrained developing countries, unions can also assist in monitoring and helping to enforce government-mandated labor standards. Unions in Poland, South Korea, and elsewhere also played important roles in promoting democracy, an obvious reason that less-democratic countries dislike discussion of core labor standards.

Some trade economists, with Jagdish Bhagwati (1995) and T. N. Srinivasan (1994) being perhaps the most vocal, reject the argument that there are any universal standards beyond freedom from forced labor. They reject harmonized child labor standards for the reasons cited above but also question the right to organize and bargain collectively on the assumption that union "monopoly" power must make economies less efficient. Besides ignoring the literature on the potential productivity-enhancing effects of unions, this argument has a rather unsettling implication: that governments or firms have the right to repress workers seeking to join a union.⁴ Although freedom of association is enshrined in the Bill of Rights of the US Constitution, Srinivasan, for example, says it is arguable whether it is "a fundamental human right." If it is not, "in a participatory democracy, the freely elected legislative bodies could choose not to confer such freedom by law for sound reasons" (Srinivasan 1994, 37).

4. On the potentially positive effects of unions on productivity, see Freeman and Medoff (1984) and Buchele and Christiansen (1995).

As Srinivasan notes, many countries place restrictions on the activities of unions, and the ILO permits some, but advocating the criminalization of unions because they *might* be economically inefficient seems an extreme step. Moreover, Srinivasan does not address the legitimacy of union repression in nondemocratic societies, where it is most likely to occur.

This discussion of core standards—freedom of association, the right to organize and bargain collectively, freedom from coerced labor, and nondiscrimination—suggests two things: that the fears of developing countries that international labor standards are intended to erode their competitiveness are unfounded and that labor advocates in developed countries who hope higher standards will reduce the competitive pressures on workers there are likely to be disappointed. This also underscores the fact that the nub of the debate is not so much about the standards *per se*, but whether they should be internationally monitored and enforced, perhaps using trade measures.

Should Labor Standards Be Enforced Internationally?

When opponents of international labor standards speak of the legitimacy of diversity in standards, they assume that those standards reflect local conditions and preferences and are therefore efficient. But why they should assume that for much of the world is not clear. Freedom House, a New York-based nonprofit that monitors freedom around the world, classified 53 countries in 1997 as “not free,” including Burma (Myanmar), China, Indonesia, and Vietnam. There are another 59 countries that Freedom House ranks as “partly free,” which means, relative to the “free” category, that “the level of oppression increases, especially in the areas of censorship, political terror, and the *prevention of free association*” (emphasis added). This group includes Bangladesh, Brazil, India, Malaysia, Mexico, Pakistan, Singapore, Thailand, and Turkey. Among the top 10 developing-country exporters in 1995, only South Korea and Taiwan were ranked by Freedom House as free.

International enforcement of core labor standards might also help overcome collective action problems, especially *among* developing countries. Many economists have argued persuasively that low labor standards in developing countries have limited effects on labor market outcomes or standards in developed countries (Maskus 1997; Freeman 1996). This is because countries with abundant endowments of labor will continue to have a comparative advantage *vis-à-vis* capital-abundant countries in labor-intensive products even if they improve enforcement of core labor standards. But developing-country governments may fear that unilateral action to raise or vigorously enforce labor standards would affect their comparative advantage *vis-à-vis* other developing countries with similar competitive structures. Thus, while a race to the bottom by rich countries

may not be a plausible outcome of the current system, remaining stuck with low standards could be a problem among developing countries.

Would a Social Clause Work?

The most controversial proposal for linking trade and labor standards is to incorporate a “social clause” into the World Trade Organization. Most such proposals envision some sort of joint enforcement of core labor standards by the ILO and WTO (ILO 1994; ICFTU 1993; Ehrenberg 1996). There are several variants, but most involve the ILO monitoring compliance and determining when violations have occurred and the WTO determining remedial action. Such proposals face a number of substantive and procedural problems.

Substantively, Maskus (1997) demonstrates persuasively that trade sanctions do not directly address the problem of inadequate standards and usually will make things worse for those they are nominally intended to help—at least in the short run. Moreover, while growth alone may not be sufficient to improve working conditions (except perhaps when it leads to increased wages), it is a necessary condition for substantial and continuing improvements. Consequently, trade measures should be used sparingly and only after other avenues have been exhausted.

Procedurally, the social clause would depart markedly from current ILO and WTO operations and would require major changes in ethos as well as rules. Those who label social clause proponents as protectionists in disguise should take a closer look, however. It is in part the safeguards against protectionist abuse that would make the social clause difficult to implement, given current institutional rules and procedures. One proposal, for example, calls for the ILO to review and monitor member states’ compliance with the seven core conventions listed above (ICFTU 1993; see also International Labor Office 1994). A finding that a member state is not respecting these standards would be followed by up to two years of consultation on how to rectify the situation, and if compliance still were not forthcoming, the matter would be referred to the WTO for action. The WTO would then determine the appropriate action, possibly including sanctions *collectively* imposed by WTO members.

The first problem with this is that, freedom of association aside, the ILO monitors the application and enforcement only of conventions that member countries have ratified.⁵ While the core conventions (other than the minimum age for work) are among the most widely ratified, some important countries have not ratified some or all of them, and important gaps

5. Freedom of association and the right to organize are regarded as constitutional obligations that all members assume when they join the ILO, regardless of whether they ratify Convention no. 87. Compliance with the general principle (but not the technical legal obligations detailed in the convention) is reviewable whether or not a member has ratified the convention.

in monitoring remain under current ILO procedures. Beginning in 1995 the ILO has tried to fill these gaps by undertaking a campaign to encourage countries to ratify the core conventions. They have had some success. Out of 174 member countries, 145 and 130 countries, respectively, have ratified the two conventions on forced labor; 137 and 130 members, respectively, have ratified the conventions on nondiscrimination in remuneration and employment; while 137 countries have ratified Convention no. 98 on the right to organize and bargain collectively (calculated from information on the ILO Web page). The United States is the most obvious outlier, having ratified only the convention on abolition of forced labor (no. 105).

To further promote respect for the principles embodied in the ILO Constitution and in its core conventions, in June 1998 the ILO membership approved a declaration providing for systematic monitoring and review of members' efforts "to promote and to realize in good faith" core worker rights, regardless of whether the applicable conventions had been ratified. However, the proposal engendered much controversy, primarily because of fears that it would be linked to the WTO, as proposed in the social clause idea. Although the declaration was approved by a vote of 273 to 1, with 43 abstentions, the language of the declaration—and comments during the debate over it—make clear that the reports generated by the "follow-up mechanism" are not to be used as the basis for imposing sanctions against countries that are found falling short of its expectations.

Thus, the declaration does not solve the procedural problems involved in identifying actionable violations under a social clause. This is compounded by the procedural problems involved in determining the appropriate remedy for such violations. Most proposals rightly emphasize the need for equity and consistency in the application of any social clause. Thus, they call for a multilateral response, which would both enhance the legitimacy of the sanction and guard against protectionist abuses. But the WTO focuses on authorizing individual members to impose countervailing trade measures as *remedies* to restore a previously negotiated balance of concessions. The use of any sanctions—much less multilateral ones—to punish another country or to coerce it to change its behavior are frowned upon, as detailed in the recent WTO panel decisions regarding tuna and dolphins, and shrimp and turtles.⁶

An Agenda for International Labor Standards

If a social clause is not feasible, what other remedies are available to the international community to improve enforcement of labor standards?

6. These cases are discussed by Peter Uimonen in this volume and in the references cited in that chapter.

The first item on the agenda should be vigorous implementation of the ILO declaration providing for expanded monitoring and review of the core conventions. The heart of the draft

[d]eclares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.⁷

The key to making the declaration meaningful is the follow-up mechanism, contained in an annex. This mechanism provides for an annual survey of reports submitted by member countries that summarizes the steps they have taken over the year to achieve the declaration's objectives. The second part of the follow-up is an annual "global report," to be prepared by the director general, that focuses on achievements in each of the four core areas during the preceding four-year period. The aim of the second report is to provide an overall view of the progress made in protecting fundamental worker rights and to highlight problem areas. Systematic reporting of this type would be extremely valuable in highlighting the importance of these core standards and in focusing attention on the most egregious violations.

The Role of the WTO

While adoption of this declaration is an important step toward revitalization of the ILO and improved enforcement of core standards, the WTO also needs to take action in this area, if for no other reason than to prevent the steady erosion of support for the institution. To date, however, developing countries have blocked discussion of labor standards issues in the WTO. At the first ministerial meeting held by the new organization in Singapore in December 1996, the final declaration reaffirmed WTO members' "commitment to the observance of internationally recognised core labour standards" and affirmed their support

7. For the genesis of the idea, see Hansenne (1997). The declaration as adopted by the International Labor Conference in June 1998, as well as background materials, are available on the ILO Web site at <http://www.ilo.org>. See especially, "Report VII: Consideration of a possible declaration of principles of the International Labour Organization concerning fundamental rights and its appropriate follow-up mechanism."

for the ILO as “the competent body to set and deal” with labor standards.” The declaration went on to state:

We reject the use of labour standards for protectionist purposes and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration. (quoted in ICFTU 1993, 1)

The problem is that there is not and never has been any formal collaboration between these two organizations.⁸

The recent political backlash in the United States and elsewhere, however, suggests that this do-nothing approach will not be politically viable for long. Moreover, there are also potential spillovers from certain labor practices that should be addressed, even if the tangible trade effect is likely to be quite small.⁹ Thus it could be both economically efficient and politically wise for the WTO to take some action in the short run against the most egregious violations of labor standards. For the longer run, as globalization proceeds and the reach of trade rules continues to lengthen, the WTO should consider the role of core labor standards, especially in potential future agreements on investment and services.

First, in the short run, the WTO should address forced labor explicitly. Article XX(e) of the General Agreement on Tariffs and Trade is a general exception to GATT obligations that allows countries to restrict imports of products made with prison labor, but it says nothing about forced labor. Why the exception is for prison labor rather than forced labor is not clear, nor does it make much economic sense, as the social utility of prison labor depends on the circumstances.¹⁰ The 1985 Leutwiler report, which set the stage for the Uruguay Round of trade negotiations, said the GATT made clear that countries could not be forced to

8. At the behest of some employer group representatives and some developing country governments, similar language was inserted in the ILO Declaration on Fundamental Principles and Rights. The debate over the declaration suggested continuing concern about formal collaboration between the ILO and WTO because it might lead to a trade-labor linkage.

9. One trade-related spillover from weak labor standards arises when there is a consumer demand for higher labor standards—that is, when consumers are willing to pay more for a good produced under minimally acceptable conditions. I do not address this issue here because Freeman (1994, 1996) has already done so in some detail, including examining how labeling and corporate codes of conduct could be used to address it. Rodrik (1997) agrees with this analysis, but both he and Freeman acknowledge that private enforcement will be inadequate if there is a public-goods aspect to the problem. These issues and case studies will also be included in Elliott and Freeman (forthcoming).

10. Prison labor may be voluntary and in some cases remunerated, though not usually at market rates. Prison labor may also serve a social function by encouraging rehabilitation and providing training that will be useful when the prisoner is released.

import products made with slave labor, but the Leutwiler interpretation is not binding. So it is not known whether a dispute settlement panel would allow a country to take action against forced labor products under this exception.

Given the broad consensus that coerced labor is beyond the pale, the WTO, whether by amendment or otherwise, should clarify that Article XX(e) indeed applies to forced labor. This would bolster the organization's political legitimacy, and it would help prevent abuse if political pressures lead countries to invoke the exception more often. This would also be a fruitful area for WTO collaboration with the ILO, with ILO reports on compliance with the conventions on forced labor serving as the basis for judging when an invocation of Article XX(e) would be justified.

Export processing zones (EPZs) are a second area in which trade and labor standards may become intertwined. EPZs provide special tax incentives and other benefits to investors willing to set up assembly operations aimed at the export of labor-intensive products. A handful of countries also explicitly waive application of national labor laws in the zones, especially those relating to union rights; many others countries simply do not enforce these standards in EPZs (US Department of Labor 1989-90). The sketchy empirical evidence suggests that the EPZs' effects on local labor markets are usually small and often positive, at least for wages, but critics assert that union repression and unenforced labor standards are rampant in these zones.

Whatever the economic efficiency effects, derogation from national labor (or environmental) standards is increasingly regarded as illegitimate behavior. Prohibiting such derogation was the only form of international labor standard negotiation that the Republican majority in Congress was willing to see included in "fast-track" trade legislation when it was debated in late 1997. The chairman of the OECD negotiations on the Multilateral Agreement on Investment (MAI) has suggested that similar restrictions be included in that agreement.¹¹ These proposals are not restricted to EPZs, but it probably makes sense for the WTO to focus its efforts initially on labor standards in EPZs because they are more directly linked to international trade and because monitoring would be relatively easy.¹²

Thus, in the short run the WTO should add labor standards in EPZs to the practices that are monitored under the Trade Policy Review Mechanism (TPRM). WTO members should also appoint a committee on trade and labor standards to make proposals in the near term on how such

11. See *Inside US Trade*, 27 March 1998, 17.

12. Over the longer run, the whole question of investment incentives should be examined because the distortions in trade and investment flows are often not offset by social benefits (Moran forthcoming; Graham 1996, 114-15).

practices might be disciplined, as well as to consider the issues raised by forced labor and Article XX(e).

For the medium to longer run, this committee should consider the treatment of labor standards in any negotiation on investment, as well as the possible inclusion of labor association services in the General Agreement on Trade in Services (GATS). As noted above, the OECD is already considering what provisions on labor standards should be included in the MAI. As currently drafted, the MAI contains nonbinding language in the preamble restating all parties' commitment to observe core labor standards, as well as binding language prohibiting contracting parties from waiving or lowering domestic labor, environmental, or other standards in order to attract investment. If completed and expanded to the broader membership of the WTO, the latter provision would broaden the application of the EPZ discipline recommended above. This provision would also help with the collective-action problem discussed earlier.

The proposed WTO committee should also study a right of establishment for, and free trade in, labor association services.¹³ Unions typically provide a variety of services to their members, in addition to representing them in negotiations over wages and working conditions. Unions may set up pension funds and training programs and negotiate over job security, profit sharing, and other forms of compensation for their members. The potential efficiency and equity effects of extending the right of establishment to unions as service providers under the international trade rules are worthy of careful consideration.

A Proposal Regarding Child Labor

Finally, although the elimination of child labor has not been addressed as a core labor standard in this chapter, progress in this area is an important objective. Adoption of a new ILO convention focusing on the worst forms of child labor is an overdue step that should be taken at the 1999 International Labor Conference, as recommended by this year's conference.

But more should be done. To put it somewhat crudely, developing countries are consuming their seed corn when children are forced to work rather than go to school. So, in addition to adopting a new ILO convention, and in the spirit of C. Fred Bergsten's proposal to achieve global free trade by 2010, the world community should set a parallel goal of achieving universal, free, and compulsory primary education over the same period. The heads of state of Western Hemisphere countries reiterated their commitment to a similar goal at their second summit meeting in Santiago, Chile, in April 1998.¹⁴ This commitment should be

13. I would like to thank J. David Richardson for suggesting this idea.

14. The text of the Santiago summit's Plan of Action is available on the US Information Agency Web site at <http://www.usia.gov>.

globalized, with the World Bank, other multilateral development banks, the ILO, the United Nations, and national governments in both the North and South committing themselves to determine how resources can be reallocated and increased, if necessary, to achieve it.

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